

Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of October 4, 2005

Members present: Co-chairman Jack Baker, Member Doug Andrew, Alternate Scott Boisvert and Secretary Meredith Bolduc.

Mr. Baker called the meeting to order at 7:30 p.m. then called the roll.

Mr. Andrew made the motion to allow Mr. Boisvert to vote on any issue to come before the Board at tonight's meeting.

Motion seconded by Mr. Baker with unanimous favorable vote.

MINUTES

Mr. Baker made the motion to accept the September 20, 2005 meeting minutes as written. Motion seconded by Mr. Andrew with unanimous favorable vote.

It was agreed to go directly to the scheduled Public Hearing and take care of any Board business when the Hearing was finished.

Case # 05-009
Dakota Realty Trust
Map 1 Lot 035-18

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

Present: Representing Surveyor Tim Lavelle of Lavelle Associates

Mr. Baker opened this Public Hearing at 7:30 pm and explained that this is a continuation of the September 20, 2005 portion of this Public Hearing.

Mr. Bakerr explained the purpose of the Board and the procedure for an Equitable Waiver of Dimensional Requirements and read the Public Notice of the Hearing which read as follows:

In accordance with NH RSA 675: 7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on Tuesday September 20, 2005 at the Fremont Town Hall for Dakota Realty Trust for 19 Dakota Drive, Map 1 Lot 035-18, Fremont NH.

The applicant is seeking an Equitable Waiver of Dimensional Requirements from the terms of Article IV Section 1 as set forth in the Town of Fremont Zoning Ordinances to

allow an existing duplex building to continue to be located in it's current location thirty one and one third (31.3') feet from the street property line.

Due to a notification error relative to proper newspaper notice, this Public Hearing did not receive the required five (5) days notice and will be continued to October 4, 2005 at 7:30 pm.

The application package included: 6 copies of the drawn plan, proper check amount and a current list of abutters. The application also included a August 22, 2005 letter from the Building Inspector Thom Roy reflecting that *"It has been noted that the dwelling unit located at 19 Dakota Drive, lot number 35-18 does not comply with the setback requirements of Fremont Zoning Ordinance; the setback requirements for this duplex dwelling unit requires a minimum of 60 foot setback from the street property line."*

Mr. Baker related that there is not a full Board present and gave Mr. Lavelle the option of waiting for a full Board for a decision. He opted to move forward with the members present.

The four points of criteria that must be met for an Equitable Waiver to be approved as well as Article IV Section 1 of the Fremont Zoning Ordinance were read.

Comment sheets were received from the following: (comments in italics)

1. Fire Chief: *"no comment"*

2. Conservation Commission: *"no comment"*.

Road Agent: *"I have spoken with the owner of the development Mr. McCarthy in reference to his driveway final permit. I finally realized the house was too close to the road making the driveway extremely steep. At that time Mr. McCarthy told me he would fix it in a couple of weeks. That was about 4 months ago and I haven't heard from him since."*

3. Health Officer: *"I approve"*

Mr. Lavelle showed the plan and noted that there was a reverse placement of the septic and foundation and that it was a legitimate mistake and not the outcome of ignorance. He added that construction was begun in 2004 and the measurements on the survey were in error in that the septic and building setback lines on the plan were switched. The Building Inspector at the time issued the permit and inspections. In the interim the Town changed building inspectors and when the owner went for an occupancy permit the new Building Inspector, Thom Roy, noticed that the building was 31.3' from the street property line. At this point the building was completed and the water line and septic system were installed.

Mr. Lavelle addressed the four elements of an Equitable Waiver of Dimensional Requirements (in italics) and the Board voted as follows:

(a) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been

subdivided by conveyance to a bona fide purchaser for value; *the placement error was not noticed until Thom Roy, Code Enforcement Officer detected it when the applicant applied for an occupancy permit.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner, owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority; *This was an honest error.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; *There is ample parking space so there would be no nuisance to the thoroughway of Dakota Drive or to the neighbors.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. *It would cost tens of thousands of dollars to pick this building up and dig up the septic system and water lines and there would be no public benefit gained.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes

Mr. Boisvert made the motion, based on the information presented and the results of the Boards vote on the four points of criteria that must be met for approval of an Equitable Waiver, that the Fremont Zoning Board of Adjustment approve the request of Dakota Realty Trust for an Equitable Waiver of Dimensional Requirements from Article IV

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Section 1 of the Fremont Zoning Ordinance, to allow an existing duplex building to continue its current location thirty one and one quarter (31.3') feet from the street property line. This approval applies to the existing building only and not to any further improvements of said building.

Motion seconded by Mr. Andrew with unanimous favorable vote.

Mr. Lavelle was reminded that anyone party to the action has 30 days to appeal this decision.

Mr. Boisvert made the motion to close this Public Hearing at 8:15 pm.

Motion seconded by Mr. Andrew with unanimous favorable vote.

Case # 05-011
Edward Gibbs
MAP 3 LOT 117

Present: Owner Ed Gibbs and representing Surveyor Tim Lavelle of Lavelle Associates

Mr. Baker opened this Public Hearing at 8:15 p.m.

Mr. Baker explained the purpose of the Board and the procedure for a Variance. The five conditions which a majority of the Board must be in agreement with in order for the Board to grant a Variance were read as was the following Public Notice of the Hearing:
In accordance with NH RSA 675: 7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 8:15 pm on Tuesday September 20, 2005 at the Fremont Town Hall for Edward Gibbs for 453 Main Street, Map 3 Lot 117, Fremont NH.

The applicant is seeking a Variance from the terms of Article XI Section E-4-i as set forth in the Town of Fremont Zoning Ordinances to allow the operation of an automotive restoration facility within the Aquifer Protection District.

Due to a notification error relative to proper newspaper notice, this Public Hearing did not receive the required five (5) days notice and will be continued to October 4, 2005 at 8:15 pm.

It was noted that Mr. Boisvert, Mr. Baker and Mr. Andrew had visited the site on September 23, 2005.

Mr. Lavelle stated that due to the new Aquifer map the property is now placed in the Aquifer Protection District where he was not previously. Mr. Gibb has a shop there now. Mr. Gibb stated that he spoke with the Planning Board in 1995 in regard to the

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automobile restoration and metal fabrication facility at his residence and he was going to go through the Planning Board process to be allowed to operate his shop when the Aquifer District was enlarged to include his property. Mr. Lavelle stated that the application is for the use variance. Mr. Lavelle stated that an Aquifer is an area of really good sandy soil that allows recharging of runoff and added that while Mr. Gibbs property is in the Aquifer the property drops down toward the back and then goes back up again. The river is about 1000' away from the back of the property.

Mr. Baker related that there are only 3 Board members present and gave the applicant the option of proceeding or waiting for a full Board for a decision. The applicant opted to continue this Public Hearing to a date certain and have a full Board present for a decision.

It was agreed that the 5 conditions that must be met in order to grant a Variance will be addressed at the next portion of this Public Hearing.

At 8:30 pm and with no further discussion, Mr. Boisvert made the motion to continue this Public Hearing to 8:15 pm on October 25, 2005.

Motion seconded by Mr. Baker with unanimous favorable vote.

TOM WATERS
Map 7 Lot 117

REHEARING REQUEST

The Board members present, Mr. Baker, Mr. Andrew and Mr. Boisvert reviewed a request from Tom Waters for a rehearing of case # 05-008 for the August 30, 2005 decision of his request for a Variance to be allowed to subdivide his 4.63 acre parcel into 2 lots thus creating a 2.53 acre lot and a 2.10 acre lot in the Aquifer Protection District which requires 3 acres per lot,. This request was received on September 28, 2005.

In the request the applicant contends;

1. That the hearing began on August 2, 2005 and a decision made on August 29, 2005.
2. The neighborhood consists of primarily single family dwellings and the neighbors who appeared were unanimous in their support of the proposed variance.
3. The majority of the lots in the neighborhood are under one acre.
4. The denial would interfere with the applicant's reasonable use of the property considering its unique setting given that the property has an excess of acreage
5. The applicant meets the standard that no fair and substantial relationship exists between the general purpose of the Ordinance and the specific restrictions of the property
6. That denial of the application was unreasonable in that granting the Variance would have less impact upon the Aquifer Protection District (two dwellings) than the permitted use of a four or five unit multi-family dwelling.
7. That the denial is illegal in that the Board did not apply the correct criteria for the unnecessary hardship element.

The Board members present, Mr. Baker, Mr. Andrew and Mr. Boisvert reviewed the applicant's request for rehearing and contentions and collectively agreed on the following:

1. The Hearing actually began on August 23, 2005, a site visit was conducted on August 29 and decision made on August 30, 2005.
2. The two neighbors (abutters) who attended the August 23, 2005 portion of the Hearing did not support the proposed Variance.
- 3 & 4. While there are several lots in the area that are under one acre there are also several lots directly across the street (Bean Road) having acreage of 2.5, 2.58, 2.59, 3.71, 3.52 acres with in excess of 200' frontage and the immediate abutter on two sides of Mr. Waters lot, lot 7-117-4, has 5.01 acres. The Board sees no hardship.
4. The purpose of the Ordinance and restrictions of the property are to protect the Aquifer Protection District from pollution and density.
5. Two dwellings would not have less impact than a 4 unit structure.
6. The correct criteria were applied and the Board found no unnecessary hardship.

Mr. Baker noted that on pages 5 and 6 of the rehearing request the property is erroneously described as 5.25 acres when it is actually 4.63 acres.

Mr. Baker, Mr. Andrew and Mr. Boisvert reviewed the August 30, 2005 Notice of Decision and it was their consensus that the decisions made at the August 30, 2005 stand. Notice of Decision:

You are hereby notified that at the August 30, 2005 portion of the duly noticed Public Hearing the Fremont Zoning Board of Adjustment did unanimously deny the request of Tom Waters, for a Variance to the terms of Article XI Section E-1 to allow a two (2) lot subdivision within the Aquifer Protection District without minimum lot size requirement, for property located at Bean Road and Bruce Avenue, Map 7 Lot 117.

RESOLVED:

Based on the information presented and as the result of the Boards vote on the five conditions, the Fremont Zoning Board of Adjustment did unanimously deny the requested Variance and did rule that the proposal would:

- (1) not diminish surrounding property values,*
- (2) would be of benefit to the public interest,*
- (3) would not result in unnecessary hardship to the owner because of special circumstances of the property that distinguish it from other properties similarly zoned,*
- (3: a) would not interfere with the applicant's reasonable use of the property,*
- (3: b) there is fair and substantial relationship between the general purpose of the Zoning Ordinance and the specific restrictions of the property,*
- (3: c) the Variance would not injure the public or private rights of others,*
- (4) granting the Variance would not do substantial justice,*
- (5) the use would be contrary to the spirit of the ordinance.*

After careful consideration the Board members voted individually on whether to grant the request of Thomas Waters for a rehearing.

Mr. Baker called for the vote:

Vote:

Mr. Baker – no
Mr. Boisvert _ no
Mr. Andrew - no

Mr. Baker made the motion that the request of Thomas Waters, Map 7 Lot 117, for rehearing of case # 05-008 be denied, based on the vote of the members and their consensus that they are firm in their decisions made at the August 30, 2005 Public Hearing of this case # 05-008.

Motion seconded by Mr. Boisvert with unanimous favorable vote.

The applicant will be immediately notified of this decision.

CORRESPONDENCE

1. An October 3, 2005 correspondence and CIP forms from RPC requesting a listing of capital purchases for capital improvement projects.

Respectfully submitted,

Meredith Bolduc, Clerk

cc: SO, TC, PB, CC, RA, BI, HO, PD, FD
ZBA files